WISCONSIN SUPREME COURT
Tuesday, May 27, 2003
1:45 p.m.

02-0036 Mary K. Sulzer v. Mary Susan Diedrich

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed in part a decision of the Waukesha County Circuit Court, Judge Donald J. Hassin presiding.

In this case, the Wisconsin Supreme Court will decide whether the interest and appreciation on the pension fund of a deceased person belongs to that person's ex-wife or his widow.

Here is the background: In September 1976, Mary Sulzer and Fred Diedrich married. They divorced in September 1989 and agreed to split the pension benefits that Fred, a Waukesha firefighter, was accruing in the Wisconsin Retirement System and in a deferred compensation program.

Fred remarried in 1992 and died three years later at age 49. His current wife, Mary Diedrich, was named as beneficiary on his accounts. Sulzer, the ex-wife, had been attempting to collect her share of the pension and compensation funds since the divorce, but, despite having court orders in her favor, she never saw the money. She began the legal action that is now before the Supreme Court in December 1996. In August 2001, the trial court awarded Sulzer the portion of Fred's benefits that she had been designated to receive in the divorce, plus the interest and appreciation on that money. The funds had grown during the 12 years between the divorce and Fred's death from $62,000 to nearly $170,000.

Diedrich, the widow, appealed the ruling to the Court of Appeals. She argued that Sulzer, as the ex-wife, had no right to the interest that accumulated on these accounts. Sulzer, on the other hand, pointed out that she had been attempting without success to collect her portion of the pension since 1989 and, had she been paid in a timely fashion, there would be no question that any interest that she earned by investing the money would be hers. The Court of Appeals, however, agreed with Diedrich, finding that Sulzer was not entitled to the interest and appreciation on her ex-husband's accounts. The appellate court noted that the courts normally award interest only when one party wrongly keeps control over another party's money and found that Diedrich had not done this. The Court of Appeals found that the delayed payment resulted from scheduling problems and substitution of attorneys rather than from a concerted effort on Diedrich's part to keep the money.

Sulzer has now appealed to the Supreme Court, where she argues that Diedrich should not benefit from a windfall of more than $100,000 in interest and appreciation on Sulzer's portion of Fred's funds.

The Supreme Court will decide whether the ex-wife or the widow in entitled to this money.

WISCONSIN SUPREME COURT
Wednesday, May 28, 2003
9:45 a.m.

02-0815 Crystal Lake Cheese Factory v. LIRC and Susan Catlin

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the Barron County Circuit Court, Judge James C. Eaton presiding.

In this case, the Wisconsin Supreme Court will decide whether an employer has a duty to create a different job for an employee who is no longer able to perform his/her old job because of a disability.

Here is the background: On Nov. 3, 1996, Susan Catlin, who was then 36 years old and a single mother to her 11-year-old son, was involved in a car accident that left her a quadriplegic with some movement in her upper body but no ability to use her legs.

At the time of the accident, Catlin had worked full-time at Crystal Lake Cheese Factory for 15 months and was earning about $1,400 per month. Her mother and sister were also employed at the factory. Catlin was a department head, supervising a four-person packing crew in the warehouse. Her main tasks were gathering store orders and making a sheet of directions for the cutters, indicating the sizes and types of cheese to be cut that day. However, she also was required to fill in for any absent employee on the warehouse crew, so she had to be able to perform a variety of tasks, including lifting 40-pound blocks of cheese, climbing ladders, driving a forklift, operating a vacuum bag sealer, and more. This work all took place in a 1940s addition to the original cheese factory, which was built in 1897.

Catlin believed that she was ready to return to work in September 1997 and she contacted Crystal Lake President Tony Curella, who had told her immediately following the accident that her job would be available for her "no matter what." Curella, however, did not return Catlin's phone calls. She was not aware that she had been terminated until she received instructions for withdrawing funds from her retirement plan.

Catlin pursued the company, and eventually two experts toured the factory and examined the requirements of the job to determine how her disability might be accommodated. They concluded that some of the warehouse tasks were going to be impossible for her and that the job as it had existed was no longer workable for her. One of the experts recommended that Catlin's job description be altered to allow her to do paperwork, packaging, and other clerical tasks but the factory owner declined to create this new position.

Catlin filed a complaint with the state, alleging that Crystal Lake had violated the Wisconsin Fair Employment Act. A hearing examiner, called an administrative law judge, heard the matter and ruled in favor of Crystal Lake. The state Labor and Industry Review Commission (LIRC) reversed that ruling, finding that Crystal Lake had discriminated against Catlin by failing to offer a reasonable accommodation for her disability. This accommodation would have consisted of changing her job responsibilities. Crystal Lake appealed to the Barron County Circuit Court and then to the Court of Appeals, and both affirmed the LIRC ruling.

Crystal Lake has now come to the Supreme Court. Also taking an active interest in this case are the Wisconsin Cheese Makers Association, Inc., and the Wisconsin Manufacturers and Commerce, Inc. They have filed *amicus*, or "friend of the court," briefs that focus on several areas of concern in the Court of Appeals' opinion, including:

- The declaration that an employer who decides not to modify a job must demonstrate how making these modifications would create a hardship; and
- The creation of a standard that says an employee must be able to perform "some or most" of the duties of a given job in order for the employer to be responsible for modifying the job to fit the person's needs.

The Supreme Court will decide whether an employer may be required to create a different job in order to accommodate an employee's disability.

WISCONSIN SUPREME COURT
Wednesday, May 28, 2003
10:45 a.m.

02-0678 State ex rel. Brook Grezelak v. Daniel Bertrand

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the Brown County Circuit Court, Judge Mark A. Warpinski presiding.

In this case, the Wisconsin Supreme Court will decide whether the lower courts were correct to dismiss a prisoner's petition for a court review of prison discipline actions. The petition was dismissed because the prisoner named the warden of the Green Bay Correctional Institution (GBCI) rather than the secretary of the Department of Corrections as the respondent.

Here is the background: Brook Grezelak is an inmate at the Supermax prison in Boscobel. In early 2000, he was incarcerated at GBCI when he received five conduct reports for violating various prison rules. He challenged them through the process available within the corrections system, and each was determined to be valid.

Grezelak then turned to the courts, filing a petition for a writ of *certiorari* with the Brown County Circuit Court. Courts issue this type of writ when they intend to review a ruling of a lower court or administrative body. In his petition, Grezelak alleged that the prison discipline system had violated his rights by not giving him proper notice of a hearing, not permitting him to compel witnesses to attend, and not filing his complaints in a timely and proper manner. The circuit court dismissed Grezelak's petition because it named Daniel Bertrand (the warden) rather than Jon Litscher (the secretary of the Department of Corrections) as the respondent.

Grezelak appealed this dismissal, arguing that the warden has direct access to the records of disciplinary hearings and therefore is the logical respondent. The Court of Appeals, however, agreed with the circuit court that the respondent should not be the custodian of the records but rather the final decision-maker in the prison system.

The Supreme Court will determine whether the lower courts were correct in dismissing Grezelak's petition.

WISCONSIN SUPREME COURT
Wednesday, May 28, 2003
1:45 p.m.

02-1384 National Auto Truckstops, Inc. v. Wisconsin Dept. of Transportation

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the St. Croix County Circuit Court, Judge Eric J. Lundell presiding.

In this case, the Wisconsin Supreme Court will look at how the Department of Transportation (DOT) calculates the value of land it takes for a public project and will determine whether certain methods are acceptable.

State law[1] gives the government authority to condemn land that is needed for public works projects, but it usually must pay the property owner the fair market value of the land. Disputes arise when the state and the property owner disagree over how the fair value should be determined. There are three generally accepted ways to calculate the value of real estate:

1. Compare it to other similar properties that have recently sold in the area (this is called a market comparison);
2. Determine what it would cost to replace; or
3. Figure the income that the property generates in its current use.

The background: National Auto Truckstops, Inc., now known as Travel Centers of America or TA, owns a piece of land where Highway 12 passes over I-94 in St. Croix County. On this land is a gas station/convenience store/restaurant. In October 1996, the state purchased some of National's land to upgrade and raise Highway 12 to handle increasing traffic.

The construction dramatically changed the entrance to the truckstop: direct access from Highway 12 is now sealed off and customers must exit the highway and make several turns to get there. National said this change hurt its business and argued that the compensation it was offered for the land was inadequate.

A jury trial was held and National presented evidence from two appraisers who estimated National's losses to be about $1 million. The judge, however, would not allow the jury to consider these estimates in determining National's damages because they were calculated using the income method and the state Supreme Court has, in past cases, ruled that this method should *not* be used because it is unreliable as it varies with the individual owner's skill and talent. The Supreme Court, however, has recognized exceptions[2] to this rule, and National argues that it fits one of these exceptions.

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[1] Wisconsin Statutes 32.09

[2] The Wisconsin Supreme Court has upheld the use of income-based valuation in situations where (1) the profits that the property produces are not due to the owner's labor and skill; (2) the profits from the business are what makes the property valuable; and (3) the property is unique and therefore there is no way to calculate its value from comparable sales. National argues that it fits under exception #1. See Leatham Smith Lodge, Inc. v. State, 94 Wis. 2d 406, 288 N.W.2d 808 (1980).

Following the judge's direction, the appraisers re-calculated the loss using the other two methods (comparable property sales and replacement cost) and arrived at much lower figures. Ultimately, the jury awarded National $275,000 for the loss of its property.

National appealed, and the Court of Appeals affirmed the trial court. The Court of Appeals concluded that a business has a right to have a reasonable access point, but does not have a right to retain specific, previously used entrances. The Court of Appeals did agree with National, however, that the rules about when the income method of valuing land may be used are confusing. That will be the focus of the Supreme Court's analysis in this case.

The Court will determine whether the lower courts were correct to calculate National's loss based upon the value of the land that was taken rather than the value of the income that was lost. In making this call, the Court will clarify the law for future, similar situations.

WISCONSIN SUPREME COURT
Thursday, May 29, 2003
9:45 a.m.

02-1599-CR State v. Peter R. Martel

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). This means that the Court of Appeals, rather than issuing its own ruling, asked the Wisconsin Supreme Court to take the case directly. The Court of Appeals certifies cases that cannot be decided by applying current Wisconsin law. The Supreme Court is the state's law-developing court while the Court of Appeals is responsible for correcting errors that occur in the trial court. This case originated in Columbia County Circuit Court, Judge Richard L. Rehm presiding.

In this case, the Supreme Court will decide whether a person can be ordered to register as a sex offender when he has not been convicted of a sex offense.

Here is the background: Peter Martel was charged with several offenses in Columbia County, including six counts of second-degree sexual assault of a child and one count of felony bail jumping. Martel agreed to plead no contest to the bail jumping charge in exchange for dismissal of the sexual assault charges, which were read into the record for sentencing purposes. Registering as a sex offender was not part of the plea agreement but the judge ordered it.

Martel asked the trial judge to remove the sex offender registration requirement, but the judge refused, noting that the Wisconsin Statutes give judges the authority to impose probation conditions that are reasonable and appropriate. Martel appealed to the Court of Appeals, which asked the Supreme Court to take this case directly.

The State concedes that the bail jumping conviction, standing alone, would not support a sex offender registration requirement. It also disagrees with the trial judge that his authority to order registration rests in the probation statute. The reason that sex offender registration is OK in this case, the State argues, is that charges that are dismissed but read into the record – "read-ins" – represent crimes that the defendant is admitting to. If a property crime is read in, for example, the judge might order the defendant to pay restitution even though the charge has been dismissed. Therefore, the State says, it follows that if a sex crime is read in, the offender has admitted the violation and should be ordered to register just as he would if he had been convicted of the crime.

The Supreme Court will decide whether the state law that requires convicted sex offenders to register[3] with local law enforcement also imposes this requirement on people who have not been convicted, but who have had these offenses read in.

[3] Wisconsin Statutes 973.048